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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	92060901
Party	Defendant The DEW, LLC dba Undie Run
Correspondence Address	THE DEW LLC 2012A EAST 22ND ST AUSTIN, TX 78722 UNITED STATES
Submission	Motion to Suspend for Civil Action
Filer's Name	Joshua G. Gigger
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Signature	/Joshua G. Gigger/
Date	04/01/2015
Attachments	Motion to Suspend 901.pdf(183198 bytes )

**UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

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<b>Cupid Charities, Inc.,</b>	)	
	)	
Petitioner,	)	
	)	
v.	)	Cancellation No. 92/060,901
	)	
<b>The DEW, LLC,</b>	)	
	)	
	)	
Registrant.	)	

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**MOTION TO SUSPEND FOR PENDING CIVIL ACTION**

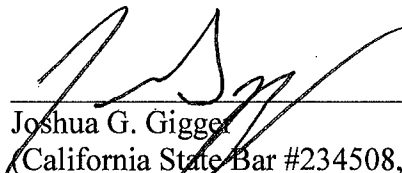
Pursuant to Trademark Rule 2.117(a), The DEW, LLC (“Registrant”), by and through its undersigned counsel, hereby moves the Board to suspend Cancellation No. 92/060,901 pending the disposition of Civil Action No. 15-cv-348, *Cupid Charities, Inc. v. The DEW, LLC*, in the U.S. District Court for the District of Colorado (the “Pending Action”).

The Board may suspend an opposition proceeding pending termination of a civil action that may have bearing on the issues before the Board. 37 C.F.R. § 2.117(a); TBMP § 510.02(a). Here, Cupid Charities, Inc. (“Petitioner”) petitioned to cancel Registrant’s registration for the mark UNDIE RUN based on Petitioner’s allegations that (a) the UNDIE RUN mark is descriptive of, and has not acquired distinctiveness for, Registrant’s services; and (b) Registrant’s registration for the UNDIE RUN mark is invalid due to fraud. The Pending Action will clearly have a bearing on the issues in this Cancellation. Specifically, Petitioner filed a First Amendment Complaint for Declaratory Judgment (the “Complaint”) in the Pending Action,

pursuant to which Petitioner sought a declaratory judgment that (a) the UNDIE RUN mark is merely descriptive of, and has not acquired distinctiveness for, Registrant's goods and services (see Complaint, Paragraphs 60-64); and (b) Registrant's registration for the UNDIE RUN mark is invalid due to fraud (see Complaint, Paragraphs 65-77). A copy of the Complaint is attached hereto as Exhibit 1.

For the foregoing reasons, Registrant respectfully requests suspension of this Cancellation pending the outcome of the Pending Action.

DATED: April 1, 2015



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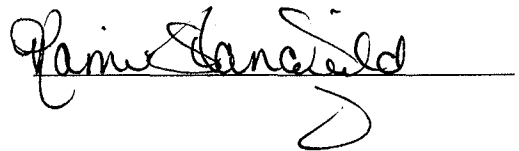
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Attorney for The DEW, LLC

### **CERTIFICATE OF SERVICE**

I hereby certify that on this 1st day of April 2015, a true and correct copy of the foregoing **MOTION TO SUSPEND FOR PENDING CIVIL ACTION** was served via first class mail, on the following:

Alexander JA Garcia  
Perkins Coie LLP  
1900 Sixteenth St., Suite 1400  
Denver, Colorado 80202-5255

A handwritten signature in cursive script, appearing to read "Alexander Garcia", is written over a horizontal line. The signature is fluid and stylized, with a large, sweeping flourish at the end.

**EXHIBIT 1**  
**COMPLAINT**  
**[ATTACHED]**

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO**

Civil Action No. 1:15-cv-00348-WYD-KLM

CUPID CHARITIES, INC.,

Plaintiff,

v.

The DEW, LLC,

Defendant.

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**FIRST AMENDED COMPLAINT FOR DECLARATORY JUDGMENT**

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This action is for declaratory judgment under the Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202, as well as for state law tort claims. Plaintiff Cupid Charities, Inc. (“Cupid Charities” or “Plaintiff”), for its complaint against Defendant The DEW, LLC (“The DEW” or “Defendant”), alleges as follows:

**PARTIES**

1. Plaintiff Cupid Charities, Inc., is a District of Columbia nonprofit corporation with its principal place of business and headquarters at 3457 Ringsby Court, #205, Denver, Colorado 80216.
2. Defendant The DEW, LLC, is, on information and belief, a Texas Limited Liability Company or unincorporated association with a business address in Austin, Texas.

**JURISDICTION AND VENUE**

3. This Court has subject matter jurisdiction over Cupid Charities' federal claim pursuant to 15 U.S.C. § 1121 and 28 U.S.C. §§ 1331 and 1338 because this Complaint raises federal questions arising under the Lanham Act, 15 U.S.C. § 1051 *et seq.* Additionally, this Court has subject matter jurisdiction over Cupid Charities' other claims pursuant to 28 U.S.C. § 1367(a).

4. This substantial controversy is of sufficient immediacy and reality to warrant the issuance of a declaratory judgment. Accordingly, a case or controversy exists under 28 U.S.C. § 2201.

5. This Court has personal jurisdiction over the Defendant because Defendant has, on information and belief, transacted business in Colorado, including organizing at least one event on the campus of Colorado State University.

6. In addition, this Court has personal jurisdiction over the Defendant because the Defendant has alleged that Cupid Charities has committed trademark infringement in Colorado, demanded that Cupid Charities cease and desist its activities in Colorado, tortiously interfered with Colorado-based Cupid Charities' business relationships, sent notices to social media platforms under the Digital Millennium Copyright Act ("DMCA") regarding Cupid Charities' business in a manner that caused damages to Cupid Charities in Colorado, and sent communications to Cupid Charities in Colorado threatening litigation.

7. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b) and (c), since a substantial part of the events giving rise to Cupid Charities' claims, including Cupid Charities' apprehension of being sued, occurred in this district, and since Defendant is subject to personal jurisdiction in this district.

### **FACTUAL BACKGROUND**

#### **A. Cupid Charities**

8. Plaintiff Cupid Charities is a District of Columbia non-profit corporation that raises awareness and money to support the mission of the Children's Tumor Foundation. The Children's Tumor Foundation supports research and other activities fighting a debilitating genetic disorder called neurofibromatosis.

9. Cupid Charities' headquarters, and most of its employees, are located in Denver, Colorado.

10. Since at least as early as 2010, Cupid Charities has hosted an annual charitable run benefitting the Children's Tumor Foundation called CUPID'S UNDIE RUN. This annual run occurs on or around Valentine's Day, where participants over the age of 21 disrobe and wear Valentine's Day-themed underwear for an approximately one-mile run. It takes many months of promotion and advance planning to successfully organize these large annual events in multiple cities.

11. Cupid Charities' CUPID'S UNDIE RUN was first held in Washington, D.C.

12. Cupid Charities raises funds for the Children's Tumor Foundation through individual race participants and sponsors who support Cupid Charities' mission by donating funds, products, venues, advertising, or otherwise provide support to the CUPID'S UNDIE RUN in various cities. Through Cupid Charities' years of investment, the annual run has expanded to more than 35 U.S. and international cities and has raised more than \$7.5 million in donations for the Children's Tumor Foundation.



13. Since 2010, approximately 40,000 participants have registered for Cupid Charities' annual CUPID'S UNDIE RUN.

14. Charitable organizations and others commonly use the phrase "undie run" to describe an event where participants disrobe until they are wearing only underwear and then participate in the physical activity of running.

15. Cupid Charities' annual run, related events, fundraising, advertising, and other activities shall be referred to herein as "Cupid's Philanthropic Services."

16. Cupid Charities also uses the following logo in connection with CUPID'S UNDIE RUN (the "CUPID'S UNDIE RUN Logo"):



**B. The DEW, LLC**

17. Defendant The DEW, LLC, is a for-profit company. On information and belief, college campuses and college organizations pay Defendant to help those entities organize undie run events.

18. Though some of these college organizations may use money raised from their events to make a charitable donation, on information and belief, Defendant is not a non-profit organization (although it sometimes holds itself out as one) and is compensated on a for-profit basis for organizing these events.

19. On information and belief, Defendant is not the first organization to conduct an undie run.

20. Defendant filed U.S. Application Serial No. 85/908,410 on April 18, 2013 to register the mark “Undie Run” (the “Alleged Mark”), which matured to U.S. Registration No. 4,615,907 (the “ ‘907 Registration”) on October 7, 2014.

21. The services identified in the ‘907 Registration include Class 35: “Arranging and conducting special events for business purposes; Arranging and conducting special events for commercial, promotional or advertising purposes; Corporate event management services; Event planning and management for marketing, branding, promoting or advertising the goods and services of others; Special event planning for business purposes; Special event planning for commercial, promotional or advertising purposes” (the “ ‘907 Services”).

22. The ‘907 Registration includes a claim of acquired distinctiveness under § 2(f) of the Lanham Act, 15 U.S.C. § 1052(f).

23. Defendant filed U.S. Application Ser. No. 85/908,480 on April 18, 2013 to register the Alleged Mark, which matured to U.S. Registration No. 4,615,908 (the “ ‘908 Registration”) on October 7, 2014.

24. The services identified in the ‘908 Registration include Class 36: “Charitable fundraising services by means of an entertainment event; Charitable fundraising services by means of organizing and conducting special events” (the “ ‘908 Services”).

25. The ‘908 Registration includes a claim of acquired distinctiveness under § 2(f) of the Lanham, 15 U.S.C. § 1052(f).

26. Defendant filed U.S. Application Ser. No. 77/928,619 on February 4, 2010 to register the Alleged Mark, which matured to U.S. Registration No. 4,133,557 (the “ ‘557 Registration”) on May 1, 2012.

27. The goods identified in the '557 Registration include Class 25: "Shirts and underwear" (the " '557 Goods" or "Defendant's Goods").

28. Collectively, the '907 Services and the '908 Services shall be referred to as "Defendant's Services."

29. Collectively, the '907 Registration, '908 Registration and '557 Registration shall be referred to as "Defendant's Registrations."

30. In connection with Defendant's '907 Registration and '908 Registration, on or about May 19, 2014, Defendant submitted evidence in support of its claim of acquired distinctiveness under Section 2(f) of the Lanham Act, 15 U.S.C. § 1052(f). *See* Exhibit 1 (relevant excerpts from Office Action Responses filed in support of Defendant's trademark applications).

31. Among the materials submitted by Defendant in support of its claims of acquired distinctness are news reports from CBS News and Fox News regarding undie runs that occurred in 2010 and 2011 at Arizona State University ("ASU"). *See id.*

32. Defendant submitted this evidence in support of what it called "widespread media coverage" to "show that consumers associate" the Alleged Mark with Defendant's services.

33. On information and belief, the undie runs that occurred at ASU, including in 2010 and 2011, were part of a series of undie runs organized by an ASU student group that first began in 2008. The ASU Undie Run was not a licensee of Defendant's Alleged Mark, including in 2010 and 2011.

**C. The DEW's Threat of Litigation**

34. On information and belief, Defendant has had actual knowledge about Cupid Charities' use of CUPID'S UNDIE RUN in connection with Cupid Philanthropic Services for many years.

35. Cupid Charities began advertising, promoting, and organizing its 2015 CUPID'S UNDIE RUN races in approximately March of 2014.

36. On or about January 28, 2015, approximately two weeks before Cupid Charities' 2015 CUPID'S UNDIE RUN, Cupid Charities received a phone call from Defendant's counsel, alerting Cupid Charities of Defendant's ownership of Defendant's Registrations. Defendant's counsel also demanded that Cupid Charities cease and desist any further use of CUPID'S UNDIE RUN in connection with Cupid's Philanthropic Services or agree to pay Defendant for a licensing arrangement in exchange for the right to continue using CUPID'S UNDIE RUN in connection with Cupid's Philanthropic Services.

37. On or about February 3, 2015, Defendant's counsel sent Cupid Charities an email, requesting that Cupid Charities cease and desist any further use of CUPID'S UNDIE RUN in connection with Cupid's Philanthropic Services or agree to a licensing arrangement with Defendant in exchange for the right to continue using CUPID'S UNDIE RUN in connection with Cupid's Philanthropic Services.

38. On that same day, February 3, 2015, Cupid Charities advised Defendant that it would respond through its counsel within a week.

39. On February 5, 2015, despite being aware that Cupid Charities had retained counsel, Defendant's counsel contacted Cupid Charities, demanding a response to its licensing

arrangement “asap” or else Defendant would “issue cease & desist letters to Cupid’s as well as its sponsors by close of business PST tomorrow [February 6].”

40. Cupid Charities responded on February 6, 2015, setting forth its position with respect to the lack of merit of The DEW’s claims, requesting information about The DEW’s alleged prior use of the term “undie run,” and requesting a discussion with Defendant on February 9 or 10. Defendant has not to date provided The DEW with any of the information requested in this letter.

41. Cupid Charities attempted to negotiate with Defendant in good faith, but Defendant did not agree to speak to Cupid Charities regarding the details of its proposed licensing arrangement until February 12, 2015. The parties spoke that day and then again on February 13, 2015. The parties were unable during those conferences to reach an agreement.

42. On February 13, 2015, the day before CUPID’S UNDIE RUNS were to take place in numerous cities, Defendant sent a cease and desist letter to Cupid Charities, alleging that Cupid Charities’ use of CUPID’S UNDIE RUN in connection with Cupid’s Philanthropic Services infringed Defendant’s Alleged Mark. A copy of Defendant’s letter is attached hereto as Exhibit 2.

43. Defendant’s February 13th letter to Cupid Charities alleged without support that Cupid Charities’ use of CUPID’S UNDIE RUN in connection with Cupid’s Philanthropic Services “creates a significant risk of confusion among consumers.” *See* Exhibit 2.

44. Defendant’s letter demanded that Cupid Charities discontinue all use of the phrase “undie run.” *See id.*

45. Defendant's letter further demanded that Cupid Charities provide Defendant with an accounting of "any and all sales of products and services by Cupid Charities in connection with" any alleged infringing material. *See id.*

46. Defendant's letter threatened that Defendant would "pursue formal legal remedies to protect its rights." *See id.*

47. There exists no good faith basis for Defendant to allege or threaten that Cupid Charities' use of CUPID'S UNDIE RUN in connection with Cupid's Philanthropic Services infringes upon Defendant's Alleged Mark or in any way creates a likelihood of confusion with Defendant's Alleged Mark.

48. The allegations and/or threats contained in Defendant's letters and communications to Cupid Charities (and, as described below, its sponsors and the companies that operate social media platforms used by Cupid Charities) were asserted wrongly, unreasonably, and in bad faith.

49. Defendant's unfounded and bad faith allegations concerning Cupid Charities' use of CUPID'S UNDIE RUN, made to both Cupid Charities and third parties, have caused and continue to cause harm to the value, reputation, and goodwill associated with Cupid Charities' CUPID'S UNDIE RUN.

50. Cupid Charities would sustain significant harm and/or damage if required to cease any use of CUPID'S UNDIE RUN. Such harm and/or damage includes, without limitation, the loss of goodwill associated with CUPID'S UNDIE RUN and the expenditure of significant time, money, and resources to develop, implement, and acquire goodwill and secondary meaning associated with CUPID'S UNDIE RUN.

51. Based on Defendant's allegations and threats contained in Defendant's communications, Cupid Charities has a reasonable apprehension of litigation. Specifically, and without limitation, Cupid Charities has a reasonable apprehension that Defendant will commence a suit against Cupid Charities for alleged trademark infringement, including but not limited to the fact that The DEW has threatened to do so. The dispute between Cupid Charities and Defendant is definite and concrete, real and substantial, and touches upon the legal relations of parties having adverse legal interests. This substantial controversy is of sufficient immediacy and reality to warrant the issuance of a declaratory judgment. Accordingly, a case or controversy under 28 U.S.C. § 2201 exists.

**D. The DEW's Interference with Cupid Charities' Business**

52. Cupid Charities maintains important business relations with third parties who donate funds, products, venues, advertising, or otherwise provide support to Cupid Charities' fundraising efforts.

53. Cupid Charities also maintains an important business relationship with The Children's Tumor Foundation, to whom Cupid Charities has donated millions of dollars to fight neurofibromatosis since 2010.

54. Cupid Charities also maintains important business relationships with past and potential future participants in its CUPID'S UNDIE RUN events, who both pay registration fees and assist with fundraising efforts.

55. On or about February 10, 2015, Defendant contacted via telephone at least Cupid Charities' sponsor, Me Undies, as well as the Children's Tumor Foundation, falsely claiming that

Defendant was commencing legal action and/or had served cease and desist letters against Cupid Charities for misappropriation of Defendant's Alleged Mark.

56. On information and belief, on or about February 13, 2015, Defendant sent cease and desist letters to a number of Cupid Charities' sponsors, including Quicken Loans, Me Undies, Fathead, and iHeartMedia, Inc., falsely claiming that Cupid Charities had infringed upon Defendant's Alleged Mark.

57. On information and belief, on or about February 13, 2015, Defendant contacted a number of social media platforms, directing these platforms to take down information about the CUPID'S UNDIE RUN based on alleged trademark, copyright or terms of services violations.

58. For instance, on or about February 17, 2015, Defendant contacted BuzzFeed and submitted a notification that Cupid Charities' BuzzFeed page contained materials constituting copyright infringement and violating the DMCA under 17 U.S.C. § 512, causing BuzzFeed to remove materials from the BuzzFeed platform.

59. To take another example, on or about February 17, 2015, Defendant also contacted Instagram and submitted a notice requesting the suspension and/or removal Cupid Charities' Instagram account, causing Instagram to shut down Cupid Charities' Instagram page.

### **COUNT I**

#### **DECLARATORY JUDGMENT THAT DEFENDANT'S ALLEGED MARK "UNDIE RUN" IS INVALID**

60. Cupid Charities incorporates by reference the allegations of the preceding paragraphs.

61. Defendant has threatened Cupid Charities with litigation for infringement of Defendant's Registrations.



62. Defendant's Registrations are invalid because the Alleged Mark, as used in connection with the goods and services identified in Defendant's Registrations is merely descriptive.

63. Defendant's '907 Registration and '908 Registration are invalid because the Alleged Mark, as used in connection with Defendant's Services, has not acquired distinctiveness pursuant to Section 2(f) of the Lanham Act, 15 U.S.C. § 1052(f).

64. Accordingly, Defendant is not entitled to maintain Defendant's Registrations on the Principal Register pursuant to Section 2(e) of the Lanham Act, 15 U.S.C. § 1052(e), and Defendant's Registrations should be cancelled.

Defendant's Registrations should be cancelled by the Court pursuant to § 14 of the Lanham Act, 15 U.S.C. § 1064 and § 37 of the Lanham Act, 15 U.S.C. § 1119.

## **COUNT II**

### **DECLARATORY JUDGMENT THAT DEFENDANT'S ALLEGED MARK "UNDIE RUN" IS INVALID DUE TO FRAUD ON THE TRADEMARK OFFICE**

65. Cupid Charities incorporates by reference the allegations of the preceding paragraphs.

66. Defendant has threatened Cupid Charities with litigation for infringement of Defendant's Registrations.

67. In support of Defendant's '907 Registration and '908 Registration, on or about May 19, 2014, Defendant submitted evidence to support its claim of acquired distinctiveness under Section 2(f) of the Lanham Act, 15 U.S.C. § 1052(f). *See* Exhibit 1 (relevant excerpts from Defendant's trademark application).

68. Included in the evidence submitted by Defendant in support of consumer association between the Alleged Mark and Defendant's services, Defendant submitted news stories from CBS News and Fox News regarding undie runs that occurred at ASU in 2010 and 2011.

69. Defendant submitted these CBS News and Fox News stories to support "the widespread media coverage of the events" under the Alleged Mark to "show that consumers associate the [Alleged Mark] with" Defendant and its services.

70. On information and belief, the ASU undie runs that occurred at the time of the 2010 and 2011 news reports were part of a series of undie runs that first began in 2008.

71. On information and belief, from 2008 through at least 2011, the undie runs at ASU were not subject to a trademark license from Defendant.

72. The CBS News and Fox News stories submitted to support Defendant's '907 Registration and '908 Registration were not reporting upon Defendant's use of the Alleged Mark, but upon the undie runs occurring at ASU in 2010 and 2011.

73. Through these acts, Defendant therefore made false statements and submitted fraudulent evidence as to its use of the Alleged Mark with the intent to procure Defendant's '907 Registration and '908 Registration, to which Defendant was not entitled, and Defendant was successful in using this evidence to procure favorable examination.

74. On information and belief, Defendant's false statements and fraudulent evidence were submitted knowingly.

75. On information and belief, Defendant's false statements and fraudulent evidence were material to procuring favorable examination.

76. Accordingly, Defendant is not entitled to maintain Defendant's '907 Registration and '908 Registration, and these registrations should be cancelled.

77. Defendant's '907 Registration and '908 Registration should be cancelled by the Court pursuant to § 14 of the Lanham Act, 15 U.S.C. § 1064 and § 37 of the Lanham Act, 15 U.S.C. § 1119.

### **COUNT III**

#### **DECLARATORY JUDGMENT THAT PLAINTIFF'S CONTINUED USE OF CUPID'S UNDIE RUN DOES NOT CONSTITUTE TRADEMARK INFRINGEMENT**

78. Cupid Charities incorporates by reference the allegations of the preceding paragraphs.

79. Defendant has engaged in conduct that gives rise to a reasonable apprehension on the part of Cupid Charities that it will face suit for trademark infringement under Section 32 of the Lanham Act, 15 U.S.C. § 1114, if Cupid Charities continues its activities with respect to its use of CUPID'S UNDIE RUN in connection with Cupid's Philanthropic Services.

80. As alleged above, Defendant's Alleged Mark is invalid. It therefore cannot be infringed.

81. Additionally, Cupid Charities' use of CUPID'S UNDIE RUN in connection with Cupid's Philanthropic Services is distinguishable from the goods and services covered in Defendant's Registrations, and on information and belief, any other goods or services used by Defendant in connection with Defendant's Alleged Mark.

82. Cupid Charities' CUPID'S UNDIE RUN mark is also distinguishable from Defendant's Alleged Mark.

83. Cupid Charities' use of CUPID'S UNDIE RUN in connection with Cupid's Philanthropic Services is not likely to cause confusion, or to cause mistake, or to deceive as to the affiliation, connection, or association of Cupid Charities with Defendant or any other person, or as to the origin, sponsorship, or approval of Cupid's Philanthropic Services by Defendant or any other person.

84. An actual, concrete, and justiciable controversy exists concerning Cupid Charities' lawful use of its CUPID'S UNDIE RUN mark.

85. Accordingly, Cupid Charities is entitled to a declaratory judgment that its use of CUPID'S UNDIE RUN in connection with Cupid's Philanthropic Services does not violate Section 32 of the Lanham Act, 15 U.S.C. §1114, or constitute trademark infringement.

86. Alternatively, Cupid Charities is entitled to a declaratory judgment that its continued use of CUPID'S UNDIE RUN in connection with Cupid's Philanthropic Services does not violate Section 32 of the Lanham Act, 15 U.S.C. §1114, or constitute trademark infringement, as Cupid Charities' continuous use of CUPID'S UNDIE RUN in connection with Cupid's Philanthropic Services predates any date that Defendant alleges it obtained acquired distinctiveness in the Alleged Mark under Section 2(f) of the Lanham Act, 15 U.S.C. 1052(f).

87. Cupid Charities is also entitled to a declaratory judgment that Defendant is not entitled to any injunctive relief or damages under 15 U.S.C. § 1117.

88. Cupid Charities is also entitled to a declaratory judgment that Defendant will suffer no damages or loss of goodwill as a result of Cupid Charities' use of CUPID'S UNDIE RUN in connection with Cupid's Philanthropic Services.

**COUNT IV**

**TORTIOUS INTERFERENCE WITH CONTRACTS  
UNDER COLORADO STATE LAW**

89. Cupid Charities incorporates by reference the allegations of the preceding paragraphs.

90. Cupid Charities has contracts with numerous sponsors who support Cupid Charities' charitable efforts.

91. Defendant knew or reasonably should have known of these contracts.

92. Defendant has intentionally interfered with the sponsors' performance of these contracts by contacting Cupid Charities' sponsors, including sending baseless cease and desist letters, threatening litigation, and/or sending letters alleging trademark infringement by Cupid Charities.

93. Defendant's interference with these contracts was improper.

94. Defendant's actions in interfering with Cupid Charities' contracts have caused Cupid Charities damages in an amount to be determined at trial.

**COUNT V**

**TORTIOUS INTERFERENCE WITH PROSPECTIVE  
BUSINESS RELATIONS UNDER COLORADO STATE LAW**

95. Cupid Charities incorporates by reference the allegations of the preceding paragraphs.

96. Cupid Charities has had continuing business relationships with various sponsors who support Cupid Charities' charitable efforts each year as well, as individual past and prospective racers.

97. Cupid Charities also has had continuing business relationships with past and potential future participants in its CUPID'S UNDIE RUN events.

98. Cupid Charities also has ongoing business relations with various social media platforms, including BuzzFeed and Instagram.

99. Defendant knew or reasonably should have known of these relationships.

100. Defendant has intentionally interfered with these prospective business relationships through contacting Cupid Charities' sponsors, including sending baseless cease and desist letters, threatening litigation maliciously and in bad faith seeking to shut down Cupid Charities' social media accounts, and/or sending letters alleging trademark infringement by Cupid Charities, thereby inducing these sponsors not to enter in to or continue relations with Cupid Charities and/or discouraging future race participants from running in CUPID'S UNDIE RUN.

101. Defendant has intentionally interfered with Cupid Charities' prospective relationships with social media platforms, including but not limited to BuzzFeed and Instagram.

102. Defendant's past, ongoing, and future interference with these prospective relationships was and is improper.

103. Defendant's actions interfering with Cupid Charities' prospective business relations have caused Cupid Charities damages in an amount to be determined at trial.

#### **COUNT VI**

#### **17 U.S.C. § 512(f) MISREPRESENTATION**

104. Cupid Charities incorporates by reference the allegations of the preceding paragraphs.

105. Cupid Charities' BuzzFeed page does not contain any materials which infringe upon Defendant's rights to any copyrighted works.

106. Defendant knew or should have known that Cupid Charities' BuzzFeed page does not contain any materials that infringe upon Defendant's rights in any copyrighted works on the date Defendant submitted a DMCA complaint to BuzzFeed.

107. Accordingly, Defendant violated 17 U.S.C. § 512(f) by knowingly and materially misrepresenting that materials contained on Cupid Charities' BuzzFeed page infringed Defendant's copyrighted works.

108. As a direct and proximate result of Defendant's actions, Cupid Charities has been injured substantially and irreparably, including a loss of key publicity during the prime advertising period after its annual run, and is thus entitled to damages in an amount to be determined at trial.

#### **PRAYER FOR RELIEF**

**WHEREFORE**, Cupid Charities requests the following relief:

- a) That the Court enter judgment declaring that Cupid Charities' use of CUPID'S UNDIE RUN in connection with Cupid's Philanthropic Services does not violate § 32 of the Lanham Act, 15 U.S.C. § 1114, or trademark infringement under the Lanham Act or the common law of Colorado, Defendant's Alleged Mark or Defendant's Registrations;
- b) That the Court enter judgment ordering the cancellation of Defendant's Registrations pursuant to § 14 of the Lanham Act, 15 U.S.C. § 1064, and § 39 of the Lanham Act, 15 U.S.C. § 1119;

- c) That the Court enter judgment enjoining Defendant, its agents, servants, employees, attorneys from interfering with, or threatening to interfere with, use of CUPID'S UNDIE RUN by Cupid Charities or its agents, employees, representatives, sponsors, beneficiaries, licensees, vendors, customers, successors, or assigns, including Cupid Charities' use of CUPID'S UNDIE RUN in any social media platforms including but not limited to BuzzFeed, Facebook, Twitter, and Instagram;
- d) That the Court enter judgment ordering Defendant to cooperate in the reinstatement of Cupid Charities' social media accounts, including but not limited to its accounts with Buzzfeed, Facebook, Twitter, and Instagram;
- e) That the Court enter judgment declaring that Defendant has not suffered any harm and is not entitled to damages or other relief under 15 U.S.C. §1117;
- f) That the Court award Cupid Charities damages in an amount to be determined at trial;
- g) That the Court award Cupid Charities its attorneys' fees, costs, and expenses incurred in this action; and
- h) That the Court grant Cupid Charities such other and further relief as this Court may deem just and proper.

**DEMAND FOR A JURY TRIAL**

Pursuant to FED. R. CIV. P. 38, Cupid Charities hereby demands trial by jury as to all issues so triable in this action.



DATED: March 27, 2015

**PERKINS COIE LLP**

By: /s/ Elizabeth Banzhoff

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